

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 1:08-cr-069

- vs -

Chief Judge Susan J. Dlott

Magistrate Judge Michael R. Merz

CLARENCE NELSON,

Defendant.

:

ORDER

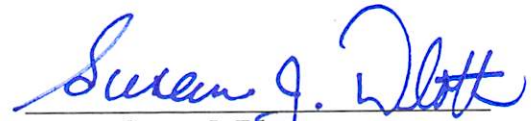
This § 2255 matter is before the Court on Defendant's Objections (Doc. No. 123) to the Magistrate Judge's Report and Recommendations (Doc. No. 122) recommending denial of Defendant's Motion to Alter or Amend the Judgment pursuant to Fed. R. Civ. P. 59(e)(Doc. No. 121). Because the instant Motion was filed post-judgment, it is deemed referred to the Magistrate Judge for report and recommendations under 28 U.S.C. § 636(b)(3).

As required by Fed. R. Civ. P. 72(b)(3), the Court has reviewed *de novo* those portions of the Report to which objection has been made. Having done so, the Court concludes that there was no manifest error in the Magistrate Judge's determination that Nelson's second-in-time Motion to Vacate under § 2255 (Doc. No. 116) was a second or successive § 2255 motion within the meaning of 28 U.S.C. § 2255(h) and therefore requires a certificate from a panel of the Sixth Circuit under 28 U.S.C. § 2244 before this Court may consider it. Under those circumstances,

circuit precedent requires that the second § 2255 motion be transferred to the court of appeals for consideration. *In re Sims*, 111 F.3d 45 (6th Cir. 1997).

Accordingly, Nelson's Objections (Doc. No. 123) are OVERRULED, the Magistrate Judge's Report and Recommendations are ADOPTED, and Defendant's Motion to Alter the Judgment is DENIED.

October 30, 2014.



Susan J. Dlott
Chief United States District Judge